

**Paul S. Yoney, Inc. and Local 173 of the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States of America and Canada. Case 34-CA-5747**

September 30, 1992

**DECISION AND ORDER**

BY MEMBERS DEVANEY, OVIATT, AND  
RAUDABAUGH

Upon a charge filed by Local 173 of the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States of America and Canada, the Union, the General Counsel of the National Labor Relations Board issued a complaint on August 6, 1992, against Paul S. Yoney, Inc., the Respondent, alleging that it has violated Section 8(a)(1) and (5) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Respondent has failed to file an answer.

On September 8, 1992, the General Counsel filed a Motion for Summary Judgment. On September 9, 1992, the Board issued an order transferring the proceeding to the Board and a notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

**Ruling on Motion for Summary Judgment**

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. The complaint states that unless an answer is filed within 14 days of service, "all the allegations in the complaint shall be considered to be admitted to be true and shall be so found by the Board." Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letter dated August 21, 1992, notified the Respondent that unless an answer was received by close of business August 28, 1992, a Motion for Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

**FINDINGS OF FACT**

**I. JURISDICTION**

The Respondent, a Connecticut corporation, with an office and place of business in Bridgeport, Connecticut,

has been engaged as a contractor in the building and construction industry. During the 12-month period ending July 31, 1992, the Respondent provided services valued in excess of \$50,000 to the State of Connecticut, which is directly engaged in interstate commerce. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

**II. ALLEGED UNFAIR LABOR PRACTICES**

The following employees of the Respondent constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All plumbers and pipefitters employed by the Respondent; but excluding all other employees, and all guards, professional employees and supervisors as defined in the Act.

Mechanical Contractors Association of Connecticut, Inc., the MCAC, has been an organization composed of employers engaged in the construction industry and exists for the purpose, inter alia, of representing its employer-members in negotiating and administering collective-bargaining agreements with labor organizations, including the Union. At all material times, the Respondent has been an employer-member of the MCAC and has authorized the MCAC to represent it in negotiating and administering collective-bargaining agreements.

About August 1, 1991, the Union entered into a collective-bargaining agreement with the MCAC "acting for and on behalf of its members and other contractors represented by [it]." Such agreement is effective for the period August 1, 1991, to July 31, 1993. About August 1, 1991, the Respondent, an employer engaged in the building and construction industry, granted recognition to the Union and since that date the Union has been recognized as such by the Respondent without regard to whether the majority status of the Union had ever been established under the provisions of Section 9 of the Act. For the period from August 1, 1991, through July 31, 1993, based on Section 9(a) of the Act, the Union has been the limited exclusive collective-bargaining representative of the employees in the unit.

About February 1, 1992, the Respondent unilaterally and without the consent of the Union failed to continue in full force and effect all the terms and conditions of the 1991-1993 agreement by failing to make the contractually required contributions to the Local 173 Health Fund, the Connecticut Plumbers & Pipefitters Pension Fund, the Plumbers & Pipefitters National Pension Fund, and the Local 173 Apprentice and Journeymen Training Fund. These subjects relate to wages,

hours, and other terms and conditions of employment of the employees in the unit and are mandatory subjects for the purposes of collective bargaining. The Respondent engaged in this conduct without prior notice to the Union and without affording the Union an opportunity to bargain with the Respondent with respect to this conduct.

#### CONCLUSION OF LAW

By failing and refusing to honor its 1991-1993 collective-bargaining agreement with the Union by failing to make contractually required contributions to the Local 173 Health Fund, the Connecticut Plumbers & Pipefitters Pension Fund, the Plumbers & Pipefitters National Pension Fund, and the Local 173 Apprentice and Journeymen Training Fund, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) and Section 2(6) and (7) of the Act.

#### REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(1) and (5) by failing to make contractually required payments to the Health, Pension and Apprentice and Journeymen Training Funds, we shall order the Respondent to make whole its unit employees by making all payments to the Funds that have not been made and that would have been made but for the Respondent's unlawful failure to make them, including any additional amounts applicable to such delinquent payments as determined in accordance with the criteria set forth in *Merryweather Optical Co.*, 240 NLRB 1213 (1979). In addition, the Respondent shall reimburse unit employees for any expenses ensuing from its failure to make such required payments, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enf'd. 661 F.2d 940 (9th Cir. 1981), such amounts to be computed in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

#### ORDER

The National Labor Relations Board orders that the Respondent, Paul S. Yoney, Inc., Bridgeport, Connecticut, its officers, agents, successors, and assigns, shall

##### 1. Cease and desist from

(a) Failing and refusing to honor the terms of its 1991-1993 collective-bargaining agreement with the Union by failing to make contractually required payments to the Local 173 Health Fund, the Connecticut Plumbers & Pipefitters Pension Fund, the Plumbers &

Pipefitters National Pension Fund, and the Local 173 Apprentice and Journeymen Training Fund.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Honor the terms of its 1991-1993 collective-bargaining agreement with the Union by making all contractually required payments to the Local 173 Health Fund, the Connecticut Plumbers & Pipefitters Pension Fund, the Plumbers & Pipefitters National Pension Fund, and the Local 173 Apprentice and Journeymen Training Fund.

(b) Make unit employees whole for any loss of benefits or other expenses suffered as a result of its failure to make contractually required payments to the fringe benefit funds.

(c) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amounts due under the terms of this Order.

(d) Post at its facility in Bridgeport, Connecticut, copies of the attached notice marked "Appendix."<sup>1</sup> Copies of the notice, on forms provided by the Regional Director for Region 34, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

<sup>1</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

#### APPENDIX

##### NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail and refuse to bargain in good faith with Local 173, United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States of America and Canada

as the limited exclusive representative of our employees in the following bargaining unit:

All plumbers and pipefitters employed by the Respondent; but excluding all other employees, and all guards, professional employees and supervisors as defined in the Act.

WE WILL NOT fail and refuse to honor the terms of our collective-bargaining agreement with the Union by failing to make contractually required payments to the Local 173 Health Fund, the Connecticut Plumbers & Pipefitters Pension Fund, the Plumbers & Pipefitters National Pension Fund, and the Local 173 Apprentice and Journeymen Training Fund.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL bargain in good faith with the Union by honoring all the terms of our 1991-1993 agreement including making all contractually required payments to the Local 173 Health Fund, the Connecticut Plumbers & Pipefitters Pension Fund, the Plumbers & Pipefitters National Pension Fund, and the Local 173 Apprentice and Journeymen Training Fund.

WE WILL make our employees whole by reimbursing them for any expenses ensuing from our failure to make such contractually required payments.

PAUL S. YONEY, INC.